(6)

IN THE HGIH COURT OF JUDICATIURE AT CHHATTISGARH

SECOND APPEAL NO.61/2003

APPELLANT / DEFENDANT — KAMAL KISHORE
S/o Shri Kanhaiyalal Agrawal,
Aged About 58years R/o Patel Ward,
Dongargarh Distt Rajnandgaon(C.G.)

VERSUS

RESPONDENTS / PLAINTIFFS — 1.SURESH KUMAR
S/O Shri Late Ganga Prasad Aged About 46 years,

2.SAKET KUMAR
S /O Shri Late Ganga Prasad Aged About 46 years,
Both R/o Danteshwari Ward Donggargaon Distt.
Rajnandgaon

APPEAL UNDER SECTION 100 OF THE CODE OF CIVIL PROCEDURE
A COURT FEE OF RS 650/- IS AFFIXED TO THE MEMO OF APPEAL AS PER THE COURT FEE PAID FOR THE FIRST APPEAL

First Additional

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

S.A. No. 61/2003

Appellant : Kamal Kishore

Versus

Respondent : Suresh Kumar & Anr.

Shri Manindra Shrivastava, learned Sr. Counsel with Shri Afroz Khan for the appellant/defendant.

Shri Prafull Bharat, learned counsel for the caveators / respondents.

JUDGMENT

(Passed on 25-2-2005)

This appeal is preferred by the defendant/tenant against the impugned judgment and decree dated 27/11/2002 passed by Additional District Judge, Rajnandgaon in Civil Appeal No. 5 A/99 by which the judgment and decree of eviction dated 29/09/99 passed by Civil Judge Class I in Civil Suit No. 3 A/1997 has been confirmed.

Facts of the case in brief are that plaintiffs are the owners of the suit property and the defendant is the tenant. The case of the plaintiffs before the trial Court was that they were the money lenders and dealing in the jewellery business. They are doing the said business in the small tenanted premises which they had taken on monthly rent of Rs. 400/- from one Prakash Chandra Bhandari. The further case of the plaintiffs before the trial Court was that the said tenanted premises is very small and it is very difficult for them to carry on their business at such a small place and the suit premises would be suitable for their business. The plaintiffs

pleaded before the trial Court that there is no other reasonably suitable non residential accommodation available to them in Dongargarh town and as such they bonafidely require the suit accommodation for opening the shop therein. It is further pleaded that they had purchased the said house from the erstwhile owner namely Mahesh Chandra Jain on 06/12/95 through a registered sale deed and one year after the purchase of the property, they instituted the instant suit for eviction as their landlord Prakash Chandra Bhandari was pressurizing for eviction. As the plaintiffs had purchased the suit premises, they had promised their landlord to vacate the said premises. It has been further pleaded in the plaint that plaintiff No.2 is carrying on his business of readymade garments in the tenanted premises of one Ganeshmal Bhandari which he obtained on monthly rent of Rs. 440/-. It is also pleaded that this shop was also inadequate for the purpose and therefore they needed the suit premises bonafidely for opening the shop.

The defendant in his written statement admitted that he was the tenant of the plaintiffs. Rent of Rs. 550/- per month has also been admitted. It is also not disputed by the defendant that the plaintiffs are the money lenders and they deal in the business of jewellery in the tenanted premises of Prakash Chandra Bhandari. However, the size of the shop and rent has been denied for want of knowledge.

The case of the defendant before the trial Court was that the shop in which the plaintiffs are carrying on their business, is sufficiently suitable and the purpose of the plaintiffs for filing the suit is to enhance the rent to Rs. 1000/- per month and as the defendant did not oblige the plaintiffs, the instant suit was filed. It is further pleaded that the plaintiffs have a very big house in the commercial area of Dongargarh town which is surrounded by road from three sides. According to the defendant, apart from the above accommodation the plaintiffs are having several other accommodations also in the commercial area of Dongargarh town which are lying vacant and the instant suit was filed with the tacit support of Prakash Chandra Bhandari. It was also pleaded by the defendant in his written statement that the plaintiffs had a big shop in the name and style of Krishna

Jewellers and this apart they have also opened another jewellery shop in their joint family house. The defendant further pleaded that apart from this accommodation, the plaintiffs have a big house admeasuring 3500 Sq.ft. within the municipal area of Dongargarh and they also have the agricultural land and as such the plaintiffs donot require the suit premises for their bona fide need.

Learned trial Court decreed the suit by recording a finding that requirement of the plaintiffs for the suit premises to carry on their business is real and bona fide as there is no other reasonably suitable vacant accommodation in their possession in Dongargarh town. The Trial Court further held that as defendant had purchased another suitable house in the name of his wife, he is liable for eviction and thus decreed the suit of the plaintiffs which was confirmed by the First Appellate Court by the impugned judgment and decree.

Learned Sr. Counsel appearing for the appellant / defendant has challenged the above concurrent finding of both the Courts below mainly on the ground that while deciding the first appeal and confirming the judgment and decree of the trial Court, the learned First Appellate Court has not applied its mind and without meticulously dealing with the evidence on record has rejected the appeal of the appellant summarily vide paragraphs 12, 13 and 14 of the impugned judgment. Learned counsel has particularly challenged the finding recorded by the first Appellate Court in paragraph 13 of the impugned judgment by which it is held that after seriously considering the evidence regarding availability of the alternative reasonably suitable accommodation available to the plaintiffs and further considering the size, place and area it would be wrong to say that the plaintiffs have more suitable commercial accommodation in their possession. He further submits that it was wrong on the part of the appellate Court to reject the appeal by recording a finding that the plaintiffs do not have more suitable commercial accommodation in their possession than the suit premises as the requirement under Section 12 (1)(f) of the Chhattisgarh Accommodation Control Act simply says that the landlord has to prove that he has no other

reasonably suitable non-residential accommodation of his own in his occupation in the city or town concerned and in support of his contention he has placed reliance on decision of the Apex Court in the matter of **Hasmat Rai and another Vs. Raghunath Prasad reported in 1981 M.P.L.J., 610**. In paragraph 6 of the said judgment Hon'ble Apex Court has held that landlord has to establish that he has no other reasonably suitable non-residential accommodation of his own in his occupation in the city or the town concerned. Learned counsel further relied on the decision of **M.P. High Court in the matter of Hakimuddin Saifi Vs. Prem Narayan Barchhiha reported in 1998 (1) M.P.L.J., 2003**. In paragraph 13 of the said judgment it is held that the landlord / plaintiff must plead and prove all the ingredients of Section 12 (1) (f) in order to succeed in a suit for eviction. Further reliance has been placed by the learned Senior Counsel appearing for the appellant on the decision of **M.P. High Court in the matter of Vikas Kumar Onkar Prasad Gupta Vs. Radhamal Heeramal Sindhi reported in 1998 (2) M.P.L.J. 139.** In paragraph 7 of the said judgment it is held that if the plaintiff / landlord does not succeed in establishing the bona fide requirement of the suit accommodation and that he has no other alternative reasonably suitable accommodation in his possession, decree of eviction in his favour can not be passed. Likewise reliance has been placed on the decision of the Supreme Court in the matters of **Deenanath Vs. Puran Lal reported in (2001) 5 S.C.C. 705 (paragrah 15)** and in the matter of **Shiv Sarup Gupta Vs. Dr. Mahesh Chand Gupta reported in (1999) 6 SCC 222 (paragraph 13)**. In both the above said cases it is held that the landlord / plaintiff must prove that he has no other suitably non-residential accommodation of his own in the city or town concerned to carry on his business.

In my considered view the above cases are not of any help to the appellant inasmuch as it is an admitted position by the pleading of the respective parties that the plaintiffs are carrying on their business in the rented premises belonging to one Prakash Chand Bhandari which was taken by the plaintiffs on monthly rent of Rs. 400/-. It has been pleaded by the plaintiffs that the tenanted premises is very small which is not sufficient for them to carry on and expand the business. Thus taking into

consideration the admitted fact that the plaintiffs are carrying on the business in the tenanted accommodation belonging to one Prakash Chand Bhandari which is not disputed by the defendant, the bona fide of the plaintiff can not be doubted on the ground of availability of reasonably suitable accommodation with the plaintiff. In this regard the Apex Court in the matter of **E.M. Kuthurathullah Vs. R.Rajendran reported in (2003) 10 SCC 679, in paragraph 2** has held as under:

> "The only submission made by the learned counsel for the appellant is that inasmuch as the case of the respondent is for occupation of the suit premises only after reconstruction and as availability of ground under Section 14(1)(b) has been negatived by the High Court, a decree for eviction pure and simple under Section 10(3)(a)(iii) could not have been passed in the facts and circumstances of the case. Having heard the learned counsel for the parties, we are of the opinion that the submission though forcefully advanced by the learned counsel for the appellant cannot be accepted. It has been held by this Court in Ramniklal Pitambardas Mehta Vs. Indradaman Amratlal Sheth that where the case pleaded by the landlord is that he wants to demolish and reconstruct the tenancy premises before occupying the same for his own requirement, the nature of the requirement pleaded would be one of bona fide requirement and not one of demolition and reconstruction. Undisputedly, in the case on hand, the landlord is running his business in a rented shop; he does not have any other non-residential premises available within the city to satisfy his own requirement. We cannot find fault with the finding of the High Court that the requirement of the landlord who is already engaged in a commercial activity but in a rented shop cannot be said to be not acting bona fide when he claims the tenancy premises of his own for satisfying his

own requirement for continuing his own business by shifting the same to the suit premises. The fact that a case of bona fide requirement for demolition and reconstruction has not been held proved would not make any difference".

In the present case there is an un-rebutted pleading of the plaintiffs that readymade garment shop run by plaintiff No. 2 is also run in the tenanted premises. So far as one of the contentions of the defendant that the family of the plaintiffs have a big house situated in commercial area of Dongargarh town which is suitable for their requirements, is concerned they have categorically stated that the house in question is used for their residential purpose and in that house a family consisting of 20 members is residing jointly. Once the plaintiff is able to establish his bona fide requirement of the suit accommodation to the objective satisfaction of the Courts of fact, the same can not be negated on the ground of availability of alternative accommodation. The Supreme Court in yet another decision in the matter of **Akhileshwar Kumar and others Vs. Mustaquim and others reported in (2003) 1 SCC 462, (Paragraph 4)** has held that once landlord proves his bona fides to the objective satisfaction of the Court of facts, the choice of accommodation which would satisfy his requirement should be left to landlord's subjective choice and the Court cannot impose its own choice. The Apex Court stressed that the landlord's choice must be reasonable and not whimsical.

Learned counsel for the appellant further challenged the finding of the first Appellate Court on the ground that the first appellate Court being the final Court of facts has dealt with the factual aspect of the case in a shortest possible manner without considering the material discrepancies available in the statement of the plaintiffs' witness who has been examined as PW-1. He referred to the various discrepancies available in the statement of PW-1 namely Suresh Kumar Soni in extenso to demonstrate that the plaintiffs have not come to the Court with clean hand and they have deliberately suppressed the availability of alternative reasonably suitable accommodation in their possession which is evident

from the statement of the above witness examined as PW-1. However, the discrepancies pointed out by the counsel for the appellant in the statement of PW-1 are of no avail in the light of the admitted position that the plaintiffs were doing their business from the tenanted premises which established the bona fide requirement of the plaintiffs for opening a shop.

Learned counsel for the appellant further relied upon the decision of the Supreme Court in the matter of **State of Rajsthan Vs. Harphool Singh (Dead) through his LRs, reported in (2000) 5 SCC 652**, wherein it is held that where there are glaring inconsistencies and contradictions in the evidence and the issues raised are serious, the Court is not hampered by the provisions of Section 100 of the CPC from interfering with even the findings of the fact of the lower Courts.

The above preposition of law is absolutely correct but in the present case, the same is not applicable because of the reason that the plaintiffs have already established their bona fide requirement of the suit premises as they are carrying on business from the tenanted premises which is not disputed by the defendants and therefore the concurrent findings of fact of both the Courts below do not call for any interference even assuming that the facts available on record have not been properly discussed at length by the first Appellate Court.

Under these circumstances, I am of the considered view that there is no substantial question of law involved for adjudication of this appeal and the Second Appeal being devoid of substance is liable to be dismissed at the admission stage itself.

Consequently, the appeal is dismissed at the admission stage itself.

M.C.P. No. 1023/2003 also stands disposed of.

Sd/-
DHIRENDRA MISHRA
Judge